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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

September 15, 1994

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, DC 20554

Re: GTE Direct Case: GTE Telephone Operating Companies  
Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 873,  
874, 893, CC Docket No. 94-81

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Comments in the above-captioned proceeding.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

*Elizabeth Dickerson*

Elizabeth Dickerson  
Manager, Federal Regulatory

Enclosure  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20054

**SEP 15 1994**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
GTE Telephone Operating Companies	)	Transmittals No. 873, 874, 893
	)	
Revisions to Tariff F.C.C. No. 1	)	CC Docket No. 94-81

**COMMENTS**

MCI Telecommunications Corporation ("MCI") hereby responds to a Petition for Waiver and Authority to Reallocate Investment from Nonregulated to Regulated Use and a Direct Case that GTE Service Corporation ("GTE") filed on June 13, 1994 and August 15, 1994, respectively.<sup>1</sup> In the Petition, GTE seeks waiver of the Commission's rules to allow it to reallocate \$5.9 million investment in video network facilities associated with the Cerritos Trial. In the Direct Case, GTE responded to factual and legal issues that the Commission identified for investigation in the Designation Order filed in response to GTE's efforts to tariff the video channel services to Apollo CableVision, Inc. ("Apollo") and GTE Service Corporation ("GTESC").<sup>2</sup> Although the Commission invites

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<sup>1</sup> See, GTE Telephone Operating Companies Revisions to Tariff F.C.C. No. 1, Order, Transmittal Nos. 873, 874, 893, and CC Docket No. 94-81, DA 94-784, July 14, 1994 ("Designation Order"). In the Designation Order, the Commission invited parties to comment on information provided in GTECA's Direct Case (which relates only to Transmittal No. 873) and in GTE's Petition (which applies to both Transmittals No. 873 and 874).

<sup>2</sup> See GTOC Transmittals No. 873 and 874, respectively.

comments on the Petition and raises several other issues in the Designation Order, MCI addresses only whether GTE California, Incorporated's ("GTECA's") transfer of investment acquired for its Cerritos, California video trial from unregulated to regulated accounts is reasonable.<sup>3</sup>

**I. Ratepayers Must Not Absorb the Costs of GTECA's Terminated Video Trial**

In its Direct Case, GTE claims that it has met the dual waiver standard that the Commission adopted to allow reassignment of investments from nonregulated to regulated operations.<sup>4</sup> That is, a carrier must make a showing that its regulated activities require the use of plant capacity allocated to nonregulated activities and that the carrier cannot obtain the needed capacity elsewhere at a lower cost.<sup>5</sup> Regardless of whether the facilities are otherwise available, GTECA is unable to demonstrate that its regulated activities require the use of one half of the plant<sup>6</sup> because its authority to provide video channel service to GTESC is uncertain.<sup>7</sup> GTE Until the matter is resolved in the courts

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<sup>3</sup> Designation Order, at para. 24.

<sup>4</sup> Direct Case, p. 7.

<sup>5</sup> Separation of the Costs of Regulated Telephone Services from the Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298 (1987), Recon. 2 FCC Rcd 6283 (1987), further recon. 3 FCC Rcd 6701 (1988), affirmed sub no., Southwestern Bell Corp. v. FCC, 896 F.2d. 1378 (D.C.Cir. 1990).

<sup>6</sup> GTE's initial unregulated investment provided seventy eight total channel, or thirty nine to each of GTESC and Apollo.

<sup>7</sup> On September 9, 1994, GTE filed Transmittal No. 909 in which it reinstated rates and charges for video channel service for GTESC that it previously had filed in Transmittal No. 874. GTE reinstated these charges to

and at the FCC, it is premature to allow such reassignment because it places access ratepayers at risk of funding video network plant that was originally acquired for a nonregulated venture that may prove to not be viable in the future.

GTECA embarked upon the video trial in Cerritos knowing that the trial had a finite life, i.e., the five year period for which the waiver was valid, and that the Commission had permitted the trial despite the existing ownership ban of cable television systems by LECs in their operating territories. As the Commission notes, "GTECA has been on notice since the original grant of the cross-ownership waiver in 1989 that this waiver [would] expire on July 17, 1994."<sup>8</sup> In effect, GTE gambled that its waiver would be extended and the Cable Act of 1984 would be rescinded, and GTECA would be able to convert its trial into an ongoing business opportunity.

GTE's wager has not paid off. Faced with either expired or rescinded Commission authority to provide the video service as a trial, GTE has attempted to tariff its video offerings.<sup>9</sup> The Commission rejected Transmittal 874 under

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comply with the Stay Pending Judicial Review that granted by the United States Court of Appeals for the Ninth Circuit, on September 7, 1994.

<sup>8</sup> Designation Order, at para. 18, citing General Telephone Company of California, 4 FCC Rcd 5693, 5700 (1989).

<sup>9</sup> MCI previously has urged rejection of GTOC Transmittal No. 873 because "GTE Service Corporation's ongoing involvement as a video programmer in Cerritos will violate the telephone company-cable television cross-ownership restrictions once the original five-year waiver expires." GTE Telephone Operating Companies, Tariff F.C.C. No. 1, Transmittal Nos. 873 & 874, MCI Petition to Reject or, in the Alternative, Suspend and Investigate,

which GTECA proposed to offer video channel service to GTESC.<sup>10</sup> The United States Court of Appeals for the Ninth Circuit stayed the Cerritos Tariff Order "insofar as it rejects Transmittal 874,"<sup>11</sup> and as noted supra, GTE has refiled the tariff material. It will not be known, however, whether GTECA can offer video channel service to GTESC on an ongoing basis until the Court takes additional action. Until this issue is resolved, it is premature for the Commission to permit reallocation of the video facilities currently utilized by GTESC to the regulated operations.

In its Petition for Waiver, GTE proposes to reallocate to the regulated operation assets with a net book value of \$5.9 million that were originally intended to provide one hundred percent nonregulated usage. GTE bases its need to execute this reallocation on its anticipated "conversion of the private video transport agreements to tariffed video channel service."<sup>12</sup> Because the issue of whether GTE will be permitted to convert the private agreements to tariffed offerings is unresolved, it is not certain that the carrier's regulated activities require the use of the plant. Thus, GTE fails to meet the standard

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May 9, 1994, p. 3.

Also, MCI opposed the tariff for Apollo "because GTE will lack the required certificate of public convenience and necessity to operate the coaxial facilities in Cerritos once said waiver expires." Id.

<sup>10</sup> Designation Order, at para. 2.

<sup>11</sup> GTE California, Inc. v. FCC, No. 93-70924, slip op. at 1 (9th Cir. September 7, 1994).

<sup>12</sup> GTE Petition, p. 3.

necessary for a waiver of the rule that prohibits reassignment of investment to regulated accounts. The Cerritos trial represents the type of situation from which the Commission's cost allocation and affiliate transaction rules were designed to protect captive interstate ratepayers. As the Commission explained in its Joint Cost Order, "If a cost were incurred largely to provide for future nonregulated services, and these services failed to grow as expected, we would not want the nonregulated share of the cost to fall on regulated operations and, therefore, be charged to ratepayers."<sup>13</sup> Here, GTE proceeded with the Cerritos trial despite the significant uncertainty associated with its limited five year duration. It now is seeking to assign the costs to its regulated operations despite the fact that it is uncertain whether it will be permitted to continue to offer the service to GTESC in the long run.

If the Commission were to allow GTECA to transfer the entire \$5.9 million investment to the regulated accounts and if, as a result of the District Court's review of the Cerritos Tariff Order, GTECA is proscribed from offering video channel service to GTESC, half of the revenue requirement associated with the investment will improperly fall, either directly or indirectly, on the general body of GTECA's access ratepayers. Under price caps, the transfer of the costs to the regulated operation will harm ratepayers by increasing the amount of potential rate increases in the event of lower formula adjustments. According to GTECA's Form 492 A, it earned only 6.58% in 1993. By loading

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<sup>13</sup> 2 FCC Rcd 1298, 1320.

unnecessary costs into the regulated rate base, GTE's earnings level will fall further, thereby providing GTECA with unwarranted justification for an increase in its access rates. Consistent with its original Cerritos waiver, the Commission should not allow any component of costs associated with GTECA's video trial to be assigned to its access ratepayers.<sup>14</sup> More appropriately, GTE's shareholders should absorb the cost of this stranded, nonregulated investment.

**II. GTE's Petition Did Not Make the Showing Required by the Commission's Rules for Reallocating Costs.**

GTE has failed to follow the Commission's prescribed methodology for reallocating costs from the nonregulated to the regulated books. Section 32.27(b) of the Commission's rules requires assets that the regulated operations acquires from the nonregulated affiliate to be transferred at "the lower of their cost to the originating activity and the affiliated group less all applicable valuation reserves, or their fair market value." In the Petition, GTE states that "the subject assets will be transferred into regulated accounts at a net book value of approximately \$5.9 million."<sup>15</sup> In the Descriptions and Justifications that accompany Transmittals No. 873 and 874, GTE further explains that since GTECA has only two customers for the network and the market value of the network is equivalent to the cost of the network, "the

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<sup>14</sup> 4 FCC Rcd 5693 (1989).

<sup>15</sup> GTE Petition, p. 4.

'market value' of these facilities essentially equals the current net book value of the network."<sup>16</sup>

In light of the Commission's recent concern for proper market valuations of affiliate transactions not made at "arm's length,"<sup>17</sup> MCI believes that GTECA must make a stronger showing that the two valuations are equivalent. First, GTECA provides one-half of its service to its regulated affiliate, GTESC. Further, the relationship between GTECA and Apollo's corporate parent, T.L. Robak (who designed and built the Cerritos facility) was the basis of the Commission's decision to rescind both its five year waiver and GTECA's Section 214 authority.<sup>18</sup> As the court noted in National Cable Television Ass'n v. FCC, "the business relationship between GTECA and Robak created an imputed affiliation between GTECA and Apollo which exceeded the carrier-user limitation contained in the Commission's rules."<sup>19</sup> Thus, GTECA effectively has an affiliate relationship with both of its video channel customers.

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<sup>16</sup>GTOC Transmittal No. 873, Description and Justification, p. 7; and GTOC Transmittal No. 874, Description and Justification, p. 4.

<sup>17</sup> Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, Notice of Proposed Rulemaking, CC Docket No. 93-251, Released October 20, 1993.

<sup>18</sup> In Re General Telephone Co. of California, Memorandum Opinion and Order, 8 FCC Rcd 8178, 8182 (1993).

<sup>19</sup> National Cable Television Ass'n v. FCC, as amended on denial of rehearing and rehearing en banc, 14 F.2d 285 (D.C. Cir. 1990). This affiliation was the basis of the Commission's decision to rescind the "good cause" waiver that initially permitted GTE to proceed with the trial. 8 FCC Rcd 8178 (1993).



Any claim that net book value is equivalent to fair market value must be closely scrutinized when a carrier is so closely aligned with its entire customer base. Further, GTECA has provided a haphazard and confusing record regarding the levels of these evaluations. In the Petition, GTECA identifies the \$5.9 million as the net book value of the assets. In the Direct Case, it appears that the fair market value is \$5.9 million, and the net book value is a higher value. In Transmittal No. 873, GTECA claims that the market value of the Cerritos network is "effectively represented" by the underlying costs of the network<sup>20</sup> , i.e., net book value.

The affiliated relationship between GTECA and its only video channel customers demands a meticulous showing of nonregulated asset valuation before the Commission should even contemplate allowing them into the regulated rate base. Instead, GTECA offered a confusing and inconsistent valuation. To comply with the Commission's rules -- to value the assets at the lower of net book cost or fair market value -- GTECA must first determine what these values are. Thus, MCI does not believe that GTECA is in compliance with the Commission's rules.

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<sup>20</sup> GTOC Transmittal No. 873, Description and Justification, p. 7.

### **III. Conclusion**

For the foregoing reasons, MCI urges the Commission to reject GTE's Petition for Waiver of Part 32 of its rules to reassign the video channel service investment related to the Cerritos Trial to its regulated operations.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

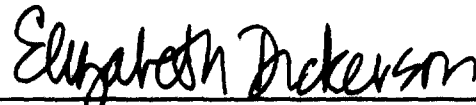
A handwritten signature in black ink, reading "Elizabeth Dickerson". The signature is written in a cursive, flowing style.

Elizabeth Dickerson  
Manager, Federal Regulatory  
1801 Pennsylvania Avenue, NW  
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September 15, 1994

**STATEMENT OF VERIFICATION**

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on September 15, 1994.

A handwritten signature in black ink, reading "Elizabeth Dickerson". The signature is written in a cursive style with a horizontal line underneath it.

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## CERTIFICATE OF SERVICE

I, Gwen Montalvo, do hereby certify that copies of the foregoing MCI Comments were sent via first class mail, postage paid, to the following on this 15th day of September, 1994:

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